

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

AIKEN DIVISION

Tyrone Mosley,)	Civil Action No.: 1:16-cv-00384-JMC
)	
Plaintiff,)	PLAINTIFF’S MOTION TO REMAND
v.)	AND
)	PLAINTIFF’S MOTION TO STAY ALL
Quicken Loans, Inc.,)	MATTERS RELATED TO THE
)	DEFENDANT’S MOTION TO DISMISS
Defendant.)	(INCLUDING DEADLINES OR TIMES
)	FOR FILINGS OR RESPONSE OR
)	OTHER ACTION)
)	

NOTICE IS HEREBY GIVEN THAT on the tenth day following the service hereof, or as soon thereafter as this matter maybe heard, Plaintiff moves before this Honorable Court pursuant to Rule 7, 28 U.S.C. § 1447 for an order remanding the within case to the Court of Common Pleas for Barnwell County, South Carolina, the State court from which it was removed. The grounds for this motion are that the Defendant has failed to meet its burden in establishing the requirements for removal or to seek removal under 28 U.S.C. §§ 1441 & 1446(b), and the amount in controversy does not exceed \$75,000.00 as required under 28 U.S.C. §1332(a)(1). The court lacks jurisdiction; thus, the matter should be remanded back to Barnwell County in the State Court of Common Pleas. Moreover, the Plaintiff moves and asserts in accordance with 28 U.S.C. §1334(c)(2) that the underlying complaint and state law based causes of action brought by the Plaintiff can be timely adjudicated in the Court of Common Pleas for Barnwell County, South Carolina.

The Plaintiff moves before this Honorable Court pursuant to Rule 7 and other applicable rules, statutes and law, for an order staying all matters related to the Defendant’s Motion to

Dismiss the Complaint of the Plaintiff, including but not limited to the time/deadline for filing any response or return by the Plaintiff, any ruling, or decision and any deadline of time to respond. The Plaintiff has thirty (30) days after the filing of Notice for Removal by the Defendant under 28 U.S.C. §1447(c) to move for remand; whereas, the time under Local Rule 7.06, and as set by the Court is less. The Plaintiff herewith is moving for remand of the matter.

The Defendant filed a Motion to Dismiss (ECF Filing No. 5) at the same time it filed a Notice of Removal (ECF Filing No. 1); therefore, the deadline to the respond the Motion to Dismiss in accordance with the Rules is shorter than the time upon which a party has to file a Motion to Remand. It is unjust for the Plaintiff to respond and appear in defense of his Complaint and claims against a Motion to Dismiss (ECF Filing No. 5), as such appearance may prejudice the Plaintiff or may result in a waiver of his rights to make a Motion for Remand, or to obtain remand. The request for stay of all proceedings related to the Defendant's Motion to Dismiss (ECF Filing No. 5) also avoids the waste of time and resources for the Court and provides that the parties shall have the issue of jurisdiction properly be addressed first prior to any other motions being heard as the Defendant's Motion to Dismiss (ECF Filing No. 5) would be moot when remand is ordered. There is no prejudice for the Defendant as the Defendant's Motion to Dismiss (ECF Filing No. 5) can be heard by the South Carolina Court of Common Pleas in Barnwell County following remand. For these reasons, as well as that which may be argued, the Plaintiff further asks that the Court stay all matters, including but not limited to any time or deadlines for any response, decision or otherwise related to the Defendant's Motion to Dismiss (ECF Filing No. 5).

This Motion for Remand and for Stay is supported by the Memorandum of Law filed herewith, a copy of which is attached hereto. Plaintiff seeks his reasonable costs and attorney's

fees in connection with this motion. The Plaintiff further requests, and reserves the right, to present briefs, additional briefs, and other evidence in making his argument in support of remand and that removal is not proper.

The undersigned hereby affirms that, prior to filing the within motion, consultation with opposing counsel consultation with opposing counsel regarding this motion would serve no useful purpose or could not be timely held.

Respectfully submitted, this 9th day of March, 2016.

ATTORNEYS FOR PLAINTIFFS

s/Steven W. Hamm

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March 9, 2016.